

ISSUES

Claimant requests review of the ALJ's findings concerning the nature and extent of his disability. Claimant argues that his current psychological problems are a direct result of the physical injuries he received in the work-related accident and that the opinion of Dr. Jeanne Frieman that he suffered a 20 percent whole person psychological impairment is more credible than Dr. James Eyman's opinion that he had a 0 percent psychological impairment. Further, claimant asserts that he is permanently, totally disabled as a result of his physical and psychological injuries. If the Board does not find that claimant is permanently, totally disabled, he contends he is entitled to a work disability of 74 percent based on a 100 percent wage loss and a 48 percent task loss.

Respondent argues there is substantial evidence in the record supporting the ALJ's determination that claimant only sustained an injury to his left knee and that claimant's claimed depression and alcohol dependence were preexisting and not a consequence of his work-related injury. Respondent further argues that claimant is not completely and permanently incapable of engaging in any type of substantial and gainful employment. Respondent also argues that claimant is not entitled to a work disability because his injury is limited to a scheduled injury.

The issues for the Board's review are:

- (1) What is the nature and extent of claimant's physical injury and disability?
- (2) Are claimant's psychological problems directly traceable to his work-related physical injury? If so, what is the percentage of functional impairment for that condition?
- (3) Is claimant entitled to an award of either permanent total disability or work disability?

FINDINGS OF FACT

Claimant worked for respondent as a truck driver for about seven years. He drove trucks hauling super loads and described it as his "dream job." He said because of state and city regulations, he had a lot of off-time during trips.

On July 31, 2008, claimant was flying from Kansas City to Pittsburgh, Pennsylvania, with a stopover in Cincinnati, Ohio, to pick up a load. On the flight from Kansas City to Cincinnati, claimant was hit in his left knee by a beverage cart that was being moved down the aisle. Claimant reported the injury to the airline and was taken by ambulance to a hospital, where x-rays were taken. He was told that he had a deep bone bruise. Claimant was then brought back to the airport where he caught a later flight to Pittsburgh. He called respondent to report the injury and ask if another driver could take his load, but no one was

available and claimant finished the job. He hoped the pain in his left knee would go away, but as of the date of his deposition, he was still having physical problems with it.

On October 20, 2008, Dr. John Gilbert, a board certified orthopedist, saw claimant at the request of respondent for an independent medical examination. Claimant told him his left knee was injured when it was struck on the kneecap by the corner of a drink cart going down the aisle of an airplane. Claimant had a markedly antalgic gait favoring the left lower extremity. He had range of motion from 0 to 120 degrees with no crepitus or effusion, his ligaments were stable, and there was no McMurray demonstrable. He had no calf atrophy on the left but had about a centimeter of left thigh atrophy compared to the right. Dr. Gilbert reviewed x-rays taken on the day of the accident. He also recommended claimant have an MRI of his left knee. After reviewing the results of the MRI, Dr. Gilbert's impression was that claimant had a contusion of his left knee.

Claimant saw Dr. Gilbert again in November and December 2008 and in February 2009. During that time, Dr. Gilbert tried to restore functionality of the knee through physical therapy for what he thought was a benign injury that was going to have to be self-limited to resolve. Dr. Gilbert said that claimant had a lot of psycho social issues. He was in conflict with his employer. He was a smoker, which is a risk factor for prolonged recovery in musculoskeletal injuries. In February 2009, Dr. Gilbert thought claimant was making satisfactory progress with the contusion on the knee. He had normal range of motion and strength in the left leg. He had an unremarkable stance and gait with no crepitus or effusion, and he showed no evidence of calf or thigh atrophy. He had completed physical therapy and a work hardening program. Dr. Gilbert opined that claimant was at maximum medical improvement. He gave claimant a restriction that he not operate a manual clutch because claimant told him he could not do so. Dr. Gilbert gave claimant no other restrictions, and he had no recommendations for further treatment. Using the *AMA Guides*,² Dr. Gilbert rated claimant as having a 2 percent impairment of the left lower extremity as a result of the injury of July 31, 2008. Under cross-examination, Dr. Gilbert stated that if claimant had a thigh atrophy, he would have qualified for an additional 3 percent lower extremity impairment under the *AMA Guides*.

Dr. Lynn Curtis is board certified in physical medicine, rehabilitation and spinal cord injury. He saw claimant on two occasions, both at the request of claimant's attorney. He first saw claimant on September 3, 2008. At that time, he believed the cause of claimant's problem was that his knee and leg were injured on July 31, 2008, and were then aggravated when claimant returned to work too early and with no restrictions.

On claimant's second visit on March 30, 2009, Dr. Curtis was asked to provide claimant with an impairment rating. He reviewed an MRI done on October 27, 2008, at St.

² American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Francis Health Center that claimant brought with him. The MRI showed fluid surrounding the lateral meniscus and fluids in the joint space. He also reviewed a copy of the MRI report of Dr. Fisher, who stated that there was minimal joint fluid present and that the menisci appeared intact. Dr. Curtis disagreed with the report of Dr. Fisher. Dr. Curtis said the MRI taken October 27 did not show that claimant had a tear, but it did show that claimant had fluid in the joint space and around the lateral meniscus, which would explain some of his symptoms. Dr. Curtis said that in the records he had to review, no doctor had diagnosed claimant with left knee internal derangement. Claimant had been diagnosed by other physicians as having a left knee contusion. Dr. Curtis' diagnosis of left knee internal derangement is based on the fluids around the meniscus and a positive McMurray test.

Dr. Curtis believed that claimant was not at maximum medical improvement on March 30, 2009, but claimant told him he wanted to leave the system. Dr. Curtis diagnosed him with a lateral meniscus injury, medial lateral instability, and thigh atrophy. He combined the meniscus injury with the medial instability only, making claimant's impairment 20 percent to the left lower extremity. Then Dr. Curtis combined the anatomic injuries, lateral meniscus untreated, and medial lateral instability of the thigh to find that claimant had a total impairment of 28 percent to the left lower extremity based on the *AMA Guides*.

Dr. Curtis placed restrictions on claimant. He said claimant could occasionally lift 20 pounds from waist to chest, stand 2 hours, and sit 6 hours. He could seldom lift 20 pounds off of the floor. He should do no stooping, crawling, kneeling, climbing ladders, or walk at unprotected heights. Dr. Curtis reviewed a task list prepared by Dick Santner. Of the 29 tasks on the list, Dr. Curtis opined claimant was unable to perform 14 for a 48 percent task loss.

Dr. Curtis reviewed Dr. Frieman's psychological evaluation. Dr. Curtis stated that because of claimant's long-standing psychological problems, his work injury has aggravated his psychological problems. Dr. Curtis said the loss of his job has only made claimant worse. Dr. Curtis said that at this point, claimant cannot work because he is having severe problems. The vocational rehabilitation plus the psychological evaluation point out that claimant's personality disorder, attention deficit, alcohol dependence, and ability to cope and change have all been made worse by his injury. Dr. Curtis said that claimant was working with vocational rehabilitation in terms of a non-heavy or non-climbing job, and they immediately found that claimant would have a hard time dealing with the public, so his likelihood of employment is low.

Dr. Peter Bieri examined claimant on August 25, 2009, at the request of the ALJ. He noted that claimant had a slight antalgic gait, but the examination revealed no visible or palpable muscle spasm at rest, there was no significant tenderness to palpation, and active range of motion was full and unrestricted. Using the *AMA Guides*, Dr. Bieri rated claimant as having a 5 percent impairment to the left lower extremity for patellofemoral pain and a 5 percent impairment for atrophy, which combine for a 10 percent permanent partial

impairment to the left lower extremity. He opined that claimant should avoid squatting and kneeling. He agreed with claimant's restriction from use of a manual clutch in his vehicle.

At some point after the accident, claimant noticed that he was lying in bed for 16 to 18 hours a day. He was not leaving the house or seeing friends. When he was not sleeping, he would be drinking. Claimant, who is part Native-American, testified he told a doctor at the Prairie Band Tribe that he was depressed. He said he also told Dr. Lynn Curtis and Dr. John Gilbert. He testified that he had recently been tested at the medical clinic at Haskell Indian Services and was told he was depressed and also may have attention deficit disorder (ADD) or attention deficit hyperactive disorder (ADHD).³ Claimant said he is still having problems with depression. He has been living with his parents, he cannot get a job, he has trouble walking, and he has trouble sleeping.

Claimant has a long history of psychological problems and alcohol dependency. Medical records indicate he started drinking at about age 15. He testified that in the mid-1980s, after his first divorce, he had a problem with alcohol dependence but was able to quit. Then, in 1997 or 1998, claimant had a medical problem with his hands and was told he would not be able to work again, and he became depressed. In 2000, his second wife divorced him, and he had some psychological issues. As a result, he was hospitalized at the Menninger Clinic (Menninger) for several days. He was not sure whether he was given a definite diagnosis at Menninger.

In July 2009, claimant was referred to Valeo Behavioral Health Care (Valeo) by SRS/Vocational Rehabilitation after he admitted he had been self-medicating with alcohol since August 2008. He entered an outpatient treatment program at Valeo in September 2009. The history from Valeo noted his long history of mental health issues. Claimant told Valeo personnel he had been self-medicating because of the severe pain in his knee. His progress note of August 31, 2009, indicated that he had stopped taking Cymbalta on his own because of side effects.

Kirk Schottler is an addiction counselor at Valeo who met with claimant. He said claimant was treated for problems related to alcohol and depression. During treatment, claimant expressed to Mr. Schottler that he felt a huge loss in losing his job and that his world had changed and the future looked bleak. Claimant was not very optimistic when Mr. Schottler first met him, but he thought in time claimant learned to deal with his problems. Valeo's note of January 7, 2010, provides that claimant reported his health was stable, he went to AA meetings, had spoken to his sponsor, and was doing well. Mr. Schottler said that nowhere in the January 7, 2010, note is claimant's mental health problem addressed. He stated that claimant was doing well because he was not drinking

³ There are no medical records from the Prairie Band Tribe or from Haskell Clinic included in the evidentiary record in this case.

or using, was going to meetings, and was meeting with his sponsor. Claimant's last session at Valeo was on February 18, 2010. He had successfully completed the recovery program.

Mr. Schottler does not work on the mental health side of Valeo. He works on the recovery side. He did not provide any mental health assessments for claimant. He is not a medical doctor, psychologist or psychiatrist. Valeo did not do a Beck Depression Inventory and was not there to gauge claimant's depression unless it became an issue that affected his recovery from alcohol abuse.

Jeanne Frieman, Ph.D., is a licensed psychologist. She sees all ages for evaluations and sees children for therapy. Dr. Frieman first saw claimant on August 11, 2009, at the request of claimant's attorney. She did not see any medical records before she saw him but has reviewed some since.

Dr. Frieman talked with claimant about his accident of July 31, 2008. It was her understanding that claimant was working and doing fine before the accident. Claimant described being injured by a beverage cart while on an airplane when the cart ran into his knee. Claimant said he began drinking after the accident in order to manage the pain. He also expressed frustration and depression because he was unable to work, and then he was fired in February 2009. By the time he was fired, he was quite depressed. Dr. Frieman performed psychological testing on claimant, after which she diagnosed him with depression and alcoholism.

Dr. Frieman utilized the 2nd edition and the 4th edition of the *AMA Guides* to go through the different categories and come up with percentages of psychological impairment she believed were related to claimant's physical injury. She rated claimant as being mildly impaired for activities of daily living. He was neglecting self care, did not do chores, and did not cook. She rated him as moderately impaired with respect to social functioning. He was irritable, withdrew from others, and had no friends. He sold possessions to buy alcohol. Claimant had memory impairments, and she rated his ability to concentrate and remember as being mildly impaired. Claimant has a high IQ (127), but his memory scores were two standard deviations below average. His level of adaptation was mildly impaired. He was having difficulty adjusting to his condition. Dr. Frieman gave him an average total disability of 20 percent, which she said was solely related to the emotional effects from the physical injury.

Dr. Frieman saw claimant again on October 1, 2009. Claimant told her he was attending an addiction treatment program at Valeo, was going to AA, and was going to church. Dr. Frieman testified that it was apparent from the Valeo reports that from the time she last saw claimant and the time Valeo dismissed him, he had relapsed and had been drinking. She noted the Valeo reports do not refer to his being depressed, but they had him on medication for depression. At the time she saw claimant, he was not enjoying life, nor was he having a wonderful life, contrary to Dr. Eyman's report.

Dr. Frieman said claimant may have had preexisting psychological conditions, but she believes they were resolved by the time he had the accident. She was aware he had been beaten as a child. Claimant did not report to her, however, that he had been raped by a relative when he was six or seven years old. Claimant told Dr. Frieman he was twice divorced, but she did not think he had any psychological consequences beyond the reasonable period of time that anybody suffers from a divorce. Dr. Frieman and claimant did not discuss the criminal charges brought against him. Claimant did not mention to her that he had been charged with assaulting his boss in 1984, but she but did not think that would necessarily display psychological impairment. Dr. Frieman saw the records from Menninger from the 2000 hospitalization, where it was written that claimant saw visual ghosts and where he said he believed his stepson was Satan. Dr. Frieman stated that in subsequent reports, claimant admitted he did not really think his stepson was Satan.

Dr. Frieman disagrees with Dr. Eyman's conclusion that although claimant has psychological issues, they are not attributable to the July 2008 accident. She testified claimant was fine the day before the accident, but, as a result of the accident and his inability to work, his alcoholism became more prominent in his life and he became depressed. Dr. Frieman believes that claimant had a recurrence of alcohol abuse due to the stress of the accident and the pain he was experiencing. She did not ask claimant about any mental health issues he had within the last five years.

Dr. James Eyman, a licensed psychologist, was appointed by the ALJ to perform an independent psychological evaluation of claimant. He met with claimant on October 6, 12 and 13, 2009. Dr. Eyman obtained a history of the accident from claimant and from his medical records. Claimant told Dr. Eyman that he had a history of drinking. Claimant also said that before the accident of July 31, 2008, he was doing fairly well and was not depressed. Claimant told Dr. Eyman that the psychological effects of his injury were that he was down all the time, had lost interest in enjoyable activities, had no interest in sexual activities, had difficulty sleeping and eating, frequently worried, did not have much energy, had difficulty concentrating, and thought about killing himself.

Dr. Eyman said that according to medical records, claimant had a history of depression that preexisted the July 31, 2008, injury. He was hospitalized at one point when he was 27 years old and then was hospitalized at Menninger in 2000. The diagnosis for claimant's hospitalization at Menninger was mood disorder with psychotic features. According to the records from Valeo, claimant said he was depressed prior to his work-related injury. He reported a family history of abuse by relatives. He had some substance abuse issues previous to the July 31, 2008, injury. Claimant indicated he started drinking alcohol at around age 14. The Valeo records listed claimant's preexisting diagnoses as: bipolar disorder, schizophrenia, depression, attention deficit disorder, and a long history of alcohol abuse.

During the times Dr. Eyman saw claimant, he was fairly calm and did not appear to be depressed or in any outward distress. Dr. Eyman said claimant gave him contradictory

information during the interviews. Some information claimant gave him was different than what was in the medical records. Dr. Eyman did not know whether claimant gave him contradictory information because he had created a false reality or because he was trying to intentionally mislead him. Dr. Eyman administered a couple of psychological tests to claimant. The Personality Assessment Inventory and the Millon Clinical Multiaxial Inventory have scales that assess how likely certain responses are, and the test results are considered invalid if responses are unrealistic and out of proportion. Dr. Eyman said that claimant's responses were so far out of the range that he could not consider the results valid.

Dr. Eyman agreed that the Valeo records show that in several visits, claimant said he was working with vocational rehabilitation to try to find a job and expressed worry about living with his parents and not being able to find a job. However, on December 17, 2009, the Valeo notes state that claimant was enjoying life, staying busy, and preparing for Christmas. On January 7, 2010, claimant stated that he was doing well. Dr. Eyman assumed that statement had to do with claimant's overall functioning. And a discharge summary from Valeo said claimant had successfully completed treatment and had reported his health as stable. He was going to AA meetings and speaking with a sponsor. Dr. Eyman said claimant did not complain about being depressed throughout most of his treatment.

Dr. Eyman believes it was possible that claimant's accident and the resulting loss of his job, and the perceptions claimant has about what his knee condition has done to him, caused a temporary increase in his depression. However, Dr. Eyman did not think claimant was currently suffering from depression. He said claimant was at maximum medical improvement concerning his psychological symptoms as related to the work-related injury. Dr. Eyman said claimant's current psychological difficulties are caused by his personality disorder and his alcohol dependence and not by his work-related injury of July 31, 2008.

In his independent psychological report, Dr. Eyman found that based on the *AMA Guides*, claimant had a 0 percent permanent partial impairment from his work-related knee injury in his activities of daily living, social functioning, concentration and ability to adapt to stressful work situations. He recommended claimant be evaluated for the possibility that he has a bipolar disorder. He also said a diagnostic understanding needed to be achieved about the specific type of personality disorder from which claimant suffers. Dr. Eyman said that it is to claimant's credit that he has not used alcohol during the past few months, and that he needs to continue to abstain from alcohol use. Dr. Eyman, however, noted that "it is clear from the medical records at Valeo that he [claimant] is not highly motivated for treatment."⁴

⁴ IME report of Dr. James R. Eyman at 8 (filed Feb. 23, 2010).

Claimant testified that soon after he was released from treatment by Dr. Gilbert in February 2009, he was terminated by respondent. Claimant said he was given no reason for the termination. He testified that although he has been looking for work, he has been unable to find a job.

Dick Santner, a vocational rehabilitation counselor, met with claimant on April 16, 2009, at the request of claimant's attorney. He prepared a list of 29 job tasks claimant performed in the 15-year period before his work-related accident of July 31, 2008.

Claimant told Mr. Santner he had completed high school and taken some machinist training following high school. He had a real estate license but let it lapse in 1999. In 2002, he went through truck driving school, receiving his CDL. In looking at the combination of Dr. Curtis' restrictions and Dr. Frieman's psychological assessment, Mr. Santner could not think of any jobs that claimant would be able to obtain and retain. If claimant only had the knee problem, Mr. Santner believed that claimant would be able to work in some capacity. Also, if claimant did not have the psychological and memory issues, he could work at a call center or as a checker at a grocery store such as Aldi's, where the checkers can sit while checking.

PRINCIPLES OF LAW

K.S.A. 2010 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2010 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510d states in part:

If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

....
(16) For the loss of a leg, 200 weeks.

....
(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.⁵ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.⁶ An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.⁷

The Kansas Supreme Court has long held that traumatic neurosis, as well as other psychiatric problems are compensable. “[W]e have held that traumatic neurosis *following physical injury*, and shown to be directly traceable to such injury, is compensable under the act.”⁸ However, the court in *Berger*⁹ cautioned:

Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment.

In *Love*,¹⁰ the Kansas Court of Appeals stated:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 *et seq.*, the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

K.S.A. 44-510e(a) states in part:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not

⁵ *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

⁶ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

⁷ *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

⁸ *Jacobs v. Goodyear Tire & Rubber Co.*, 196 Kan. 613, 616, 412 P.2d 986 (1966).

⁹ *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 550, 506 P.2d 1175 (1973).

¹⁰ *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl., 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

K.S.A. 44-510c(a)(2) defines permanent total disability as follows:

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

While the injury suffered by the claimant was not an injury that raised a statutory presumption of permanent total disability under K.S.A. 44-510c(a)(2), the statute provides that in all other cases permanent total disability shall be determined in accordance with the facts. The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.¹¹

In *Wardlow*¹², the claimant, an ex-truck driver, was physically impaired and lacked transferrable job skills making him essentially unemployable as he was capable of performing only part-time sedentary work.

¹¹ *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

¹² *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

The court in *Wardlow* looked at all the circumstances surrounding his condition including the serious and permanent nature of the injuries, the extremely limited physical chores he could perform, his lack of training, his being in constant pain and the necessity of constantly changing body positions as being pertinent to the decision whether the claimant was permanently totally disabled.

ANALYSIS

The Board agrees with and adopts the analysis of the ALJ and his conclusion that claimant's permanent partial disability is limited to a 10 percent functional impairment to the left lower extremity, a scheduled injury at the level of the leg. Claimant has a history of alcohol abuse, emotional trauma, and psychological/psychiatric problems that predate the work-related knee injury in this case. The Board disagrees with Dr. Frieman's conclusion that claimant had recovered from those problems and was fine before the accident of July 31, 2008. In order for a psychological problem to be compensable under the Kansas Workers Compensation Act, the psychological condition and impairment must be directly traceable to the physical injury. Although the physical injury and resulting job loss may have temporarily aggravated claimant's depression and mood disorder, it is not proven that this is what occurred. There is not even any agreement as to what claimant's diagnosis is. Claimant was diagnosed with alcohol dependency, mood disorder with psychotic features, bipolar disorder, schizophrenia, depression, ADD and ADHD all before this accident. And claimant has no new diagnosis post-accident that he did not have before. Claimant's life was not without significant physical and emotional traumas before this accident, including physical abuse, divorce, social inhibitions and financial insecurity.

The Board finds and concludes that claimant has failed to prove any permanent psychological impairment that is directly attributable to the physical (knee) injury. The Board further finds that claimant's permanent impairment of function is 10 percent to the left lower extremity at the level of the leg. As this is a scheduled injury under K.S.A. 44-510d, claimant is not entitled to a general body disability or work disability under K.S.A. 44-510e. This injury does not give rise to the presumption of permanent total disability, nor has claimant proven that he is permanently and totally disabled as a result of his knee injury. Although claimant apparently lost his job with respondent because of the restrictions given to him by Dr. Gilbert for the knee condition, there are other jobs that claimant retains the ability to perform. Claimant's job search efforts attest to the fact that there are jobs that claimant believes he can do. Moreover, the restrictions claimant has been given by the treating and testifying physicians for the knee injury do not preclude claimant from working.

CONCLUSION

- (1) Claimant has a 10 percent scheduled injury to the leg.

(2) Claimant's psychological problems are not directly traceable to his work-related physical injury.

(3) Claimant is not entitled to an award in excess of his percentage of functional impairment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated July 21, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Christopher M. Crank, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge